

Government of the District of Columbia

ZONING COMMISSION



Zoning Commission Order No. 636

Case No. 87-2

(Vesting of Construction and Occupancy Rights II)

October 16, 1989

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings in this case on June 11, 1987 and January 7, 1988. The hearings were conducted as rulemaking proceedings pursuant to 11 DCMR 3021. The scope of the January 7, 1988 hearing did not include the issues that are the subject of this order.

The Final Rulemaking that is effected with this Order addresses several issues that were included in the scope of the notice of public hearing in this case, but which were not included in the notice of proposed rulemaking that was published on May 20, 1988 (35 DCR 3891), nor in the final rulemaking that was effected with Zoning Commission Order No. 588 (36 DCR 653; January 20, 1989). For that reason, on September 8, 1989, a further notice of proposed rulemaking was published, and the proposed amendments were referred to the National Capital Planning Commission (NCPC), pursuant to D.C. Code Sec. 5-417(a) (1988).

The purposes of the three proposed amendments are as follows:

1. Restrict the vesting of use rights, that is, the right to obtain a certificate of occupancy, when the Zoning Commission has decided to have a hearing on an amendment to the Zoning Map, unless the amendment is requested by an individual property owner;
2. Allow a building permit that would otherwise be precluded by 11 DCMR 3202.5 to be issued when an emergency has created a threat to the public health or safety; and
3. Provide that no limitation on the vesting of construction rights is activated by the setting of a hearing on the map amendment application of a property owner.

The limitation on the vesting of use rights would protect the public interest against the last-minute establishment of any use that would become nonconforming upon the adoption of amendments to the zoning map that are pending when the use is established. The Commission perceives no private benefit in the establishment of nonconforming uses that is not outweighed by the larger public interest involved.

The second amendment would provide a necessary safety valve, by permitting construction that is needed to respond to an emergency.

The third amendment would exempt individual PUD and map amendment applications from the limitation on the vesting of construction rights. The limitation was adopted for the purpose of regulating vesting when a rulemaking case is pending, and was not intended to apply to individual applications. The exemption thus conforms the terms of the rule to its original purpose.

By report dated October 11, 1989, the Executive Director of NCPD reported that the proposed rules would not adversely affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

One other letter offering comments was submitted to the Zoning Commission during the comment period that the Commission provided. By letter dated October 10, 1989, the law firm of Stohlman, Beuchert, Egan and Smith urged the Commission not to adopt the proposed amendment to 11 DCMR 3203.7, on the ground that its application to previously authorized uses would be unfair and unreasonable in a number of circumstances that require the issuance of a new certificate of occupancy. The circumstances that were set out as examples involve a new owner or tenant and new construction. The Commission has added Paragraph (e) to 11 DCMR 3203.7, to provide an exception that applies to a change of the owner or tenant that is carrying on a previously authorized use. 11 DCMR 3203.11 reasonably addresses uses that are related to previously approved construction.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

The Commission has determined that the changes from the notice of proposed rulemaking are minimal and insubstantial, and do not require further notice of proposed rulemaking.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations regarding vesting of construction and occupancy rights. The specific amendments to Title 11, DCMR (the Zoning Regulations) are as follows:

1. Restrict the vesting of use rights, that is, the right to obtain a certificate of occupancy, when the Zoning Commission has decided to have a hearing on an amendment to the Zoning Map, unless the amendment is requested by an individual property owner, by revising 11 DCMR 3203.7 to read as follows:

3203.7 If an application for a certificate of occupancy is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed use, the processing of the application, and the establishment of the occupancy shall be governed as follows:

- (a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by sub-section 3203.8;
- (b) Except as otherwise provided in sub-section 3203.11, if the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any use authorized by the certificate of occupancy may be established and maintained, only in accordance with the most restrictive provision of the zone district classifications being considered for the site, or in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding;
- (c) For purposes of paragraph (b) of this sub-section, the phrase "zone district classifications being considered for the site" shall include any zone district classification that the Zoning Commission has decided to notice for adoption and the zone district classification that is in effect on the date the application is filed;

- (d) The limitation that is set forth in paragraph (b) of this sub-section shall not apply to a decision to hold a hearing on an application that is filed by an owner of property, pursuant to paragraph 102.2(a) of this title; and
 - (e) The limitation that is set forth in paragraph (b) of this sub-section shall not apply to an application for a certificate of occupancy that only changes the identity of the owner or occupant, and does not change a use authorized by a certificate of occupancy that was issued either before the decision to hold a hearing or pursuant to paragraph (a) of this sub-section.
- 2. Allow a building permit that would otherwise be precluded by 11 DCMR 3202.5 to be issued when an emergency has created a threat to the public health or safety, by adding paragraph (d) to that sub-section, to read as follows:
 - (d) The limitation that is set forth in paragraph (b) of this sub-section shall not prevent the issuance of a building permit that is necessary in an emergency to protect the public health or safety;
- 3. Provide that no limitation on the vesting of construction rights is activated by the setting of a hearing on the map amendment application of a property owner, by adding paragraph (e) to sub-section 3202.5, to read as follows:
 - (e) The limitation that is set forth in paragraph (b) of this sub-section shall not apply to a decision to hold a hearing on an application that is filed by an owner of property, pursuant to paragraph 102.2(a) of this title.


Vote of the Zoning Commission on proposed action on October 17, 1988: 3-0 (Lindsley Williams, Maybelle Taylor Bennett, and John G. Parsons to approve proposed amendments to the Zoning Regulations; Lloyd D. Smith, not voting, not having participated in the case; and Elliott Carroll not present, not voting).


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Vote of the Zoning Commission on October 16, 1989, on final action to adopt the foregoing amendments to the Zoning Regulations: 3-0 (John G. Parsons and Maybelle Taylor Bennett to approve; George M. White to approve by proxy; and Lloyd D. Smith and Tersh Boasberg, not voting, not having participated in the Case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on

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MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

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